IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE THIRTIETH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE DR JUSTICE G.YETHIRAJULU

WRIT PETITION NO : 14933 of 2004

Between:

M/s.Asian Peroxides Limited, Leelavathi Building, 69, Armenian Street, Chennai rep.by its Vice President
(Finance) & Corporate Affairs, R/o.Chennai.

..... PETITIONER

AND

M/s.Andhra Pradesh State Financial Corporation, 5-9-194, Chiragali Lane, Hyderabad.

.....RESPONDENT

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a direction or order or writ more in the nature of writ of mandamus declaring the action of the respondent in seeking to sale the lease hold rights claimed by the respondent in the property of the petitioner namely the buildings and land of 2.86 acres land in survey No.20/3, 21/5 & 21/8 of Kotapoluru village, Sulurpet Mandal,Nellore District is illegal, arbitrary and violative of the provisions of section 29 of the state Financial Corporations Act, 1551 and Article 14 and 300-A of the Constitution of India and consequently direct the respondent to stop all further proceedings for sale of lease hold rights in the property of the petitioner and to handover the buildings and land situated in survey No.20/3, 21/5 & 21/8 of Kotapoluru Village, Sulurpet Mandal, Nellore District.

Counsel for the Petitioner:MR.R.RAGHUNANDAN

Counsel for the Respondent No.: MR.Y.N.LOHITA

The Court at the stage of admission made the following **ORDER**:

The petitioner is the owner of Ac.1-00 cents of land, which was leased out to a firm known as M/s. APL Canpak Private Limited. The said firm after taking the land of the petitioner on lease for a period of 30 years, borrowed money from the respondent-Corporation, constructed a building and installed machinery for the purpose of its business. The said firm, after running the factory for some period, expressed its inability to run the same and committed default in repayment of the installments to the Corporation. The Corporation, in order to recover the amount due from the borrower, brings the machinery for sale. The respondent Corporation seized the machinery and the leasehold interest in the land by exercising power under Section 29 of the A.P.State Financial Corporation Act on 16-03-2004.

The apprehension of the petitioner is that in the event of the sale of the machinery, the respondent corporation is likely to induct a third party for the purpose of running an industry during the subsistence of the period of lease for 30 years and in such an event, the rights of the petitioner are likely to be jeopardized over the Ac.1-00 cents of land. Therefore, he approached this Court through this Writ Petition seeking to declare that the action of the respondent in bringing the leasehold rights to sale as illegal, arbitrary and violative of the provisions of Section 29 of the A.P. State Financial Corporation Act of 1951.

It is an undisputed fact that the petitioner executed a lease deed in favour of the borrower firm for a period of 30 years. The borrower in turn mortgaged the leasehold right over the property of the petitioner by deposit of title deeds. It is also not in dispute that the Corporation shall have the right to continue to have the possession of the land during the subsistence of the lease period. Since there is apprehension to the petitioner that the respondent is likely to induct a third party into possession of the property for establishment of any factory without the consent of the petitioner, the third party is likely to effect the rights of the petitioner in enjoying the property. Therefore, during the course of arguments, it was expressed that the respondent shall not induct any third party without the consent of the petitioner for which the respondent expressed its readiness. After obtaining the consent of the petitioner, which shall not be denied by the petitioner unless the antecedents of the prospective inductor are bad.

Having regard to the facts and circumstances of the case, it is declared that the respondent has every right to sell the leasehold rights to a third party with the consent of the petitioner during the substance of the lease period. The petitioner shall not deny the consent on flimsy grounds except on the ground that the antecedents of the prospective lessee are bad.

The Writ Petition is accordingly disposed of. No order as to costs.

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Dr. G. Yethirajulu, J.

Dt:30th September, 2004.

To

1. M/s.Andhra Pradesh State Financial Corporation,

5-9-194, Chiragali Lane, Hyderabad.

2. Two CD copies.